

SO ORDERED.

SIGNED this 13th day of February, 2018.



Lena Mansori James
LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:)	
)	
Subash Lawrence Samaroo,)	Case No. 17-51247
)	
Debtor.)	Chapter 13
_____)	

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY
AND GRANTING IN REM RELIEF

This matter came on for hearing January 31, 2018, on the Motion for Relief from the Automatic Stay (the “Motion”) filed by U.S. Bank National Association, Trustee for the holders of the CSFB Mortgage Pass-Through Certificates, Series 2002-HE4 by Select Portfolio Servicing as servicing agent (the “Creditor”), under 11 U.S.C. § 362(d)(4) to exercise its state law rights with respect to certain real property located at 1651 Harper Road, Clemmons, North Carolina (the “Real Property”) and more fully described in the Motion. Craig S. Haskell appeared on behalf of the Creditor, and Kathryn L. Bringle appeared as the Chapter 13 Trustee. Subash Lawrence Samaroo, the pro se debtor (the “Debtor”), did not appear. The court heard testimony from Mr. Charles Gabriel (“Gabriel”), who was a party to the transactions that gave rise to the

filing of the Motion. The court, having considered the Motion and exhibits, the testimony of Gabriel, and the record in this case, finds and concludes as follows:

1. The Creditor filed the Motion on December 29, 2017. The Motion was initially served on the Debtor, the Trustee, and the Bankruptcy Administrator and set for hearing on January 17, 2018. The court continued the hearing on the Motion until January 31, 2018. In the interim, the Motion was also served on Gabriel, Carolyn Gabriel, Darryl Wayne Rowdy, Z. Victoria Gabriel, and CF Gabriel, Jr., as reflected on the Supplemental Certificate of Service filed with the court on January 22, 2018.
2. All parties and possible record owners were served with the Motion and the order continuing hearing. No objection to the Motion was filed by any interested party. Gabriel appeared at the hearing and offered testimony, but did not indicate that he had any objection to the Motion.
3. The Real Property was previously owned by Gerry O. Belcher and Sabrina R. Belcher, both of whom were deceased prior to the events further described in this order.
4. The Creditor is the holder of a note executed by the Belchers on or about October 26, 2001, and this indebtedness is secured by a deed of trust on the Real Property.
5. On November 18, 2016, a deed purporting to convey title to the Real Property was recorded in the Office of the Register of Deeds of Forsyth County at Book 3319, Page 1109. This deed identifies the grantor as Darryl Wayne Rowdy, Executor of Sabrina R. Belcher and Gerry O. Belcher, and the grantee as Charles Frances Gabriel. (Docket No. 16, Ex. C). The deed indicates that no consideration was paid for the transfer and that it was prepared by J. Robert Starns, PLLC. Gabriel, the grantee, confirmed that no consideration was paid. Also, Gabriel's testimony revealed that he prepared the deed, not

J. Robert Starns as indicated on the face of the deed, and that the transfer was not in fact made pursuant to the authority of the Estates Division of the Forsyth County Clerk of Court. Gabriel admitted at the hearing that he was not a licensed attorney.

6. The Creditor initiated foreclosure proceedings on the Real Property on December 13, 2016.
7. On April 28, 2017, a deed purporting to convey title to the Real Property from Gabriel to Carolyn Gabriel was recorded in the Forsyth County Register of Deeds at Book 3344, Page 2111. Again, the deed indicates that no consideration was paid, and that it was prepared by J. Robert Starns, PLLC. (Docket No. 16, Ex. D). Gabriel, now the grantor, confirmed that no consideration was given for this transaction, and as with the November 2016 deed, Gabriel's testimony was that he prepared this second deed, not J. Robert Starns as indicated on its face.
8. Pursuant to an order of the Clerk of Court of Forsyth County, the Creditor was authorized to sell the Real Property at a foreclosure sale that was conducted on November 8, 2017. The Creditor was the high bidder at the foreclosure sale and the statutory upset bid period was due to expire at 5:00 p.m. on November 20, 2017.
9. On November 20, 2017, at 3:51 p.m., a document entitled "Corrective Deed" was recorded in the Forsyth County Register of Deeds Office at Book 3379, Page 478. This document purports to correct the deed that had previously been recorded on April 28, 2017 by giving notice of an error that the grantees under that deed were intended to be Carolyn Gabriel, Z. Victoria Gabriel, the Debtor, and CF Gabriel, Jr. (Docket No. 16, Ex. E). Gabriel prepared and signed this document. Again, no consideration was given for this transfer.

10. Immediately after filing the Corrective Deed, Gabriel filed a limited power of attorney, which is recorded in Forsyth County Register of Deeds Office at Book 3379, Page 479. This document purports to make Gabriel an attorney-in-fact for the Debtor with the power to represent the Debtor in various matters regarding the Real Property, and includes the power to “prepare, to execute and to file all required papers and instruments which are necessary for an effective filing under the United States Bankruptcy Code.” (Docket No. 16, Ex. F).
11. On November 20, 2017, at 4:11 p.m., the bankruptcy petition that commenced the present case was filed with this court. Gabriel prepared and filed the Debtor’s bankruptcy petition and schedules in this case. Gabriel also paid the filing fee and two plan payments with his own funds.
12. According to Gabriel’s testimony, he filed the Corrective Deed immediately before the expiration of the upset bid period in the foreclosure proceeding for the purpose of delaying the foreclosure proceeding. Gabriel also filed the bankruptcy petition for the purpose of stopping the foreclosure proceeding.
13. The Creditor did not consent to the transfer of the Real Property to Gabriel in November 2016, from Gabriel to Carolyn Gabriel in April 2017, or finally to Carolyn Gabriel, Z. Victoria Gabriel, the Debtor, and CF Gabriel, Jr. on November 20, 2017.
14. The Debtor did not appear at his § 341 meeting of creditors or at the hearing on this Motion. The Debtor does not reside at the Real Property, and Gabriel could not recall if the Debtor had visited the Real Property at any time within the last six months. Gabriel testified that he has been acquainted with the Debtor for approximately three years, and that the Debtor has been out of the country for an extended period of time.

15. The court has concerns about Gabriel’s actions, purportedly on behalf of the Debtor. It is not clear to the court why the Debtor would have any interest in preventing the Creditor’s foreclosure on the Real Property. The Debtor does not appear to have any connection to the Real Property other than being named as a grantee on the document entitled Corrective Deed, filed less than 30 minutes before the filing of the bankruptcy petition.
16. Section 362(d)(4) provides that a creditor may obtain relief from the automatic stay—
- (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--
- (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
- (B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

11 U.S.C § 362(d)(4).¹

16. Courts grant relief under § 362(d)(4) when three elements are present. *In re Ford*, 522 B.R. 829, 840 (Bankr. D.S.C. 2014); *In re API M&I Holding, LLC*, No. 14-22451, 2015 WL 228205, at *6 (Bankr. D. Kan. Jan. 14, 2015). First, the filing of the petition must be part of a scheme, meaning an “intentional artful plot or plan” and not through “misadventure or negligence.” *Ford*, 522 B.R. at 840 (citations omitted). Second, the

¹ The Bankruptcy Technical Corrections Act of 2010 amended section 362(d)(4) by replacing the word “and” in the phrase “a scheme to delay, hinder, and defraud creditors” with the word “or.” See 3 *Collier on Bankruptcy* ¶ 362.05[19][a], 362-84 (Richard Levin & Henry J. Sommer eds.-in-chief, 16th ed.)

object of the scheme is to delay, hinder, or defraud creditors. *Id.* Third, the scheme involves either a transfer of some interest in real property without the secured creditor's consent (or court approval) or multiple bankruptcy filings affecting the property. *Id.*

17. In this case, there is no doubt that the filing of the Debtor's petition was part of a scheme that included multiple purported transfers of title to the Real Property without consideration. And according to Gabriel's direct and unequivocal testimony, the object of this scheme was to delay the Creditor's foreclosure proceedings on the Real Property. Lastly, the Creditor did not consent to any of the transfers of the Real Property.
18. There is no evidence that the Debtor was complicit in the scheme or has acted in bad faith. However, a debtor need not be a part of or aware of the scheme for the court to grant in rem relief under § 362(d)(4)(A). *In re Greenstein*, 576 B.R. 139, 163 (Bankr. C.D. Cal. 2017) (discussing a scheme whereby a borrower, or person acting on behalf of a borrower, purports to transfer a fractional interest in real property to a debtor in bankruptcy in order to utilize the automatic stay). *See also In re Dorsey*, 476 B.R. 261, 266 (Bankr. C.D. Cal. 2012) (granting relief under § 362(d)(4) and noting "[I]n the case at bar, there is no evidence . . . that the *Debtor* is part of the scheme."). Rather, the plain language of § 362(d)(4) makes no mention of the *debtor's* actions or motives. It focuses instead upon whether the filing of the petition, along with either the transfer of an interest in real property or prior bankruptcy filings affecting the real property, was part of a scheme to delay, hinder, or defraud a creditor. The individual perpetrating the scheme need not be the debtor.

19. Based upon the foregoing, cause exists for modification of the automatic stay afforded by § 362 of the Bankruptcy Code. Further, based upon the court's findings, the court will grant in rem relief pursuant to § 362(d)(4) with respect to the Real Property.

NOW, THEREFORE, it is hereby ORDERED that the automatic stay afforded by 11 U.S.C. § 362 is modified with respect to the Real Property to allow the Creditor to exercise its state law rights with respect to the Real Property.

IT IS FURTHER ORDERED that the Creditor is authorized to file a copy of this Order with the Forsyth County Register of Deeds and as provided by 11 U.S.C. § 362(d)(4), this order shall be binding in any other case under this title purporting to affect the Real Property filed not later than two years after entry of this order, except that a debtor in a subsequent case under this title may move for relief from this order for good cause shown, after notice and a hearing.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

CASE NO.: 17-51247

IN RE:

Subash Lawrence Samaroo,
Debtor.

CHAPTER 13

PARTIES TO BE SERVED

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